

AMENDMENTS TO LB 1016

Introduced by Business and Labor.

1 1. Strike the original sections and insert the following
2 sections:

3 Section 1. Sections 1 to 10 of this act shall be known
4 and may be cited as the Contractor Employee Classification and
5 Public Contract Duty Act.

6 Sec. 2. For purposes of the Contractor Employee
7 Classification and Public Contract Duty Act:

8 (1) Construction has the same meaning as in section
9 48-2103;

10 (2) Contractor means a sole proprietor, partnership,
11 firm, corporation, limited liability company, association, or other
12 legal form engaged in the business of construction and includes a
13 general contractor or subcontractor;

14 (3) Interested party means a person with an interest in
15 compliance with the act, including an employee, the Department of
16 Labor, or the Department of Revenue; and

17 (4) Performing services means the performance of
18 construction labor for remuneration.

19 Sec. 3. (1) An individual performing services is an
20 employee of a contractor unless the following are true, in which
21 case the individual is an independent contractor:

22 (a) The individual has been and will continue to be free
23 from control or direction over the performance of the service, both

1 under the contract and in fact;

2 (b) The individual is engaged in an independently
3 established trade, occupation, profession, or business;

4 (c) The individual makes performance of the service
5 available to the general public;

6 (d) When appropriate, the individual furnishes the tools
7 and equipment necessary to provide service; and

8 (e) The contractor does not represent the individual as
9 an employee to customers.

10 (2) An individual performing services is presumed to be
11 an independent contractor if:

12 (a) The individual has registered as a contractor
13 pursuant to the Contractor Registration Act at least six months
14 prior to commencing construction work for the contractor;

15 (b) The individual has been assigned a combined tax rate
16 pursuant to subdivision (4) of section 48-649 or the employees of
17 the individual are exempted from unemployment insurance coverage
18 pursuant to subdivision (6) of section 48-604; and

19 (c) The individual is listed on the data base established
20 by the Department of Revenue under subsection (3) of section
21 77-2753 as found in AM2244 to LB 1001 (2008).

22 (3) The Department of Revenue shall establish and operate
23 a hotline for contractors to call to confirm compliance under
24 subsection (2) of this section.

25 Sec. 4. It is a violation of the Contractor Employee
26 Classification and Public Contract Duty Act for a contractor to
27 designate an individual as an independent contractor who would be

1 properly classified as an employee under section 3 of this act.

2 Sec. 5. In addition to any other remedies available
3 to the Department of Labor and the Department of Revenue, an
4 interested party aggrieved by a violation of the Contractor
5 Employee Classification and Public Contract Duty Act may bring
6 an action in the district court in the county where an alleged
7 violation occurred. All interested parties shall be joined in such
8 action and shall have the right to be represented by counsel
9 of their own choosing. The cause of action provided for in this
10 section is available for the following:

11 (1) The amount of combined tax, with interest, that would
12 have been paid by the contractor under the Employment Security
13 Law, based upon the contractor's combined tax rate at the time
14 of employment, if the individual working for such contractor would
15 have been properly classified as an employee under section 3 of
16 this act;

17 (2) The amount of state income tax that would have been
18 withheld by the contractor, based upon the rates at the time of
19 employment, if the individual working for the contractor would have
20 been properly classified as an employee under section 3 of this
21 act;

22 (3) The difference in the compensation paid to the
23 individual by the contractor as compared to the average prevailing
24 rate of compensation for like work, as determined by the Department
25 of Labor, during the time of employment;

26 (4) In the case of unlawful retaliation, all legal and
27 equitable relief as may be appropriate; and

1 (5) Attorney's fees and costs.
2 Amounts recovered by settlement or judgment shall be
3 equitably divided as agreed upon by the interested parties or, in
4 the absence of an agreement, as determined by the district court
5 where the action was pending or might have been brought.

6 Sec. 6. It is a violation of the Contractor Employee
7 Classification and Public Contract Duty Act for a contractor, or
8 an agent of a contractor, to retaliate through discharge or in
9 any other manner against an individual for exercising any right
10 granted under the act. Rights granted under the act include making
11 a complaint to the contractor or a governmental agency, bringing an
12 action under the act, or participating in an investigation of an
13 alleged violation of the act.

14 Sec. 7. Every contractor shall post in a conspicuous
15 place at the job site in English and Spanish the following notice:

16 (1) Every individual working for a contractor has the
17 right to be properly classified by the contractor as an employee
18 rather than an independent contractor if the individual does not
19 meet the requirements of an independent contractor under the state
20 law known as the Contractor Employee Classification and Public
21 Contract Duty Act;

22 (2) If you as an individual working for a contractor have
23 been improperly classified, you may bring a lawsuit against the
24 contractor under the state law known as the Contractor Employee
25 Classification and Public Contract Duty Act. Your lawsuit may
26 include claims for:

27 (a) The amount of combined tax, with interest, that

1 should have been paid by the contractor under the Employment
2 Security Law as provided in such state law;

3 (b) The amount of state income tax that should have been
4 withheld by the contractor as provided in such state law;

5 (c) The difference in the compensation paid to you as
6 compared to the average prevailing rate of compensation for like
7 work;

8 (d) In the case of unlawful retaliation by the contractor
9 against you, all legal and equitable relief as may be appropriate;
10 and

11 (e) Your expenses for attorney's fees and court and other
12 costs relating to the lawsuit;

13 (3) It is a violation of the state law known as the
14 Contractor Employee Classification and Public Contract Duty Act for
15 a contractor, or an agent of the contractor, to retaliate through
16 discharge or in any other manner against you for exercising any
17 right granted under the act. Rights granted under such state law
18 include making a complaint to the contractor or a governmental
19 agency, bringing an action under the act, or participating in an
20 investigation of an alleged violation of such state law; and

21 (4) If you believe you have not been properly classified
22 as an employee by the contractor you work for, contact an attorney,
23 the Department of Labor, or the Department of Revenue.

24 Sec. 10. The Contractor Employee Classification and
25 Public Contract Duty Act shall not be construed to affect or
26 apply to a common-law or statutory action providing for recovery in
27 tort and shall not be construed to affect or change the common-law

- 1 interpretation of independent contractor status as it relates to
- 2 tort liability or a workers' compensation claim.